

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed February 15, 2006. In order to advance prosecution of this Application, Claims 1, 12, 17, 26, and 36 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Xu, et al. in view of Salminen and further in view of Jagannathan, et al. Independent Claims 1, 12, 17, 26, and 36 recite in general the ability to move a mobile object from a home network to a foreign network in response to unavailable resources at the home network and execute the mobile object on a first virtual machine at a first router on the foreign network, where the mobile object is computer language code operable to be executed by or executed on the home or foreign network. By contrast, the Xu, et al. patent merely provides a capability for a mobile wireless device to communicate with its home network remotely through a foreign network. There is no mention of an object having computer language code in the Xu, et al. patent let alone its mobility from a home network to a foreign network. Moreover, there is no disclosure in the Xu, et al. patent that this object mobility is triggered by a lack of resources in the home network. In addition, there is no disclosure in the Xu, et al. patent of execution of a mobile object once moved to the foreign network. The Examiner seems to equate the mobile node of the Xu, et al. patent with the claimed mobile object. However, the mobile node of the Xu, et al. patent is a wireless device, such as a laptop computer or PDA, that can communicate data with a target host despite not being in its home network. Data communications in the Xu, et al. patent are facilitated through agents, i.e. routers, associated with the laptop computer's home network and the foreign network

where the laptop currently resides. The mobile wireless node of the Xu, et al. patent is not remotely equivalent to the mobile object of the claimed invention, which is software code capable of being executed to perform a function. The Examiner also uses the Salminen patent in combination with the Xu, et al. patent. However, the Salminen patent is similarly related to mobile wireless stations roaming from one area to another with no disclosure concerning objects in computer language code or their mobility as provided in the claimed invention.

The Examiner attempts to overcome the deficiencies of the Xu, et al. and Salminen patents by citing the Jagannathan, et al. patent in a proposed combination therewith. However, the Jagannathan, et al. patent is directed to a distributed agent software system in a computer network. As a result, the Xu, et al. and Salminen patents and their ability to respond to a physical mobile wireless device roaming between telecommunications networks are not remotely related to object mobility in a computer network as provided in the Jagannathan, et al. patent. The Examiner is attempting to combine patents in separate fields of technology and in separate technical environments that are solving completely different problems in their respective area of technology. A person of skill in the art would hardly consider the mobile wireless devices in the telecommunications networks of the Xu, et al. and Salminen patents in relation to the mobile objects of the claimed invention executing a desired service let alone consider the Jagannathan, et al. patent and its movable objects with the mobile wireless devices of the Xu, et al. and Salminen patents. Moreover, the Examiner has failed to show that the proposed combination would even work or have any expectation of success. For arguments sake, even if the cited patents could be combined for some reason, they would still lack an ability to move a mobile object in response to unavailable

resources at the home network and execute the mobile object at the foreign network as required in the claimed invention. Therefore, Applicant respectfully submits that Claims 1-38 are patentably distinct from the proposed Xu, et al. - Salminen - Jagannathan, et al. combination.

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and characterization of the cited art in support thereof raised by the Examiner. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now raised the new grounds of rejection.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Jagannathan, et al. patent as the Examiner has only now used the Jagannathan, et al. patent to support a rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the previous rejections of the claims and overcame the Xu, et al. and Salminen patents used by the Examiner to reject these claims. Now the Examiner comes back with the Jagannathan, et al. patent in combination with the Xu, et al. and Salminen patents which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Jagannathan, et al. patent in the same manner as the Xu, et al. and Salminen patents were used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s]witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office Action did not substantially change the subject matter of the claims to force the Examiner to now use the Jagannathan, et al. in support of the claim rejections.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Jagannathan, et al. patent and associated new grounds of rejection. By not providing Applicant the capability to fully respond to the Jagannathan, et al. patent without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

CONCLUSION

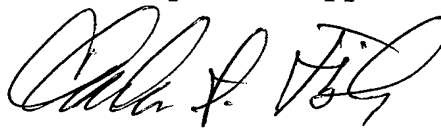
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

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